

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Mikal J. White Mountain,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Douglas Webber, Warden (S.D.), Wayne)	
Stenehjem, Attorney General of North)	
Dakota, and Leann Bertsch, Director, North)	
Dakota Department of Corrections and)	
Rehabilitation,)	Case No. 1:07-cv-091
)	
Respondents.)	

Before the Court is Petitioner Mikal J. White Mountain's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody filed on December 6, 2007. See Docket No. 4. On January 31, 2008, Respondents Douglas Webber, Leann Bertsch, and Wayne Stenehjem filed a motion to dismiss. See Docket No. 9. Magistrate Judge Charles S. Miller, Jr. reviewed the pending motion and, on July 25, 2008, submitted a Report and Recommendation. See Docket No. 26. Judge Miller recommended that White Mountain's petition be dismissed because White Mountain's claims for ineffective assistance of counsel fail as a matter of law. Judge Miller also recommended that if the petition is dismissed the Court should not issue a certificate of appealability.

On September 2, 2008, White Mountain filed an objection to Judge Miller's Report and Recommendation. See Docket No. 31. White Mountain simply reiterates the same arguments previously presented to Judge Miller.

The Court has carefully reviewed the Report and Recommendation, White Mountain's objection, relevant case law, and the record as a whole, and finds that the Report and Recommendation is persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 26) in its entirety, **DISMISSES** White Mountain's petition (Docket No. 4), and **GRANTS** the Respondents' motion to dismiss (Docket No. 9). Further, the Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that White Mountain has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 15th day of September, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court